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15 August 1988
OCA 2749-88

MEMORANDUM FOR: Chief, Administrative Law Division/OGC
Deputy Director for Compensation, Automation
and Planning/OP

FROM: [redacted] Legislation Division
Office of Congressional Affairs

STAT

SUBJECT: Federal Personnel Improvements Act of 1988,
S. 2530

1. Attached for your information is the above-captioned bill, which was passed by the Senate on 27 July 1988. It has been referred to the House Post Office and Civil Service Committee.

2. The bill, which addresses alternative pay programs, bonus payments, incentive pay, and the like, exempts the Agency. Should you have any questions, please telephone me on

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Attachment

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SUBJECT: Memo to C/ALD/OGC and DD/CAP/OP re Federal Personnel
Improvements Act of 1988, S. 2530

OCA, [] 15 Aug 88

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sen's staff, not both. Both of Senator Thurmond's staff, and finally Ed McGaffigan of my own staff.

Without their hard work, we would not be in a position to take this long step forward toward civil service reform. Many hours of effort over the past 3 years have gone into finding a middle ground around which a consensus for reform could be forged. We are all the beneficiaries of that effort.

The PRESIDING OFFICER: If there are no further amendments, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 2530

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Personnel Improvements Act of 1968".

SEC. 1. STATEMENT OF PURPOSE.

The purposes of this Act are to—

- (1) improve the management of the pay systems for Federal employees;
- (2) increase the efficiency of agency operations;
- (3) enhance the productivity of the Federal workforce; and
- (4) promote the efforts of the Government in the recruitment and retention of qualified career employees.

TITLE I—ALTERNATIVE COMPENSATION PROGRAMS

SEC. 101. DEFINITIONS.

For purposes of this title—

(1) the term "agency" means an Executive agency (as defined in section 105 of title 5, United States Code), except that such term does not include—

- (A) the National Security Agency;
- (B) the Central Intelligence Agency;
- (C) the Defense Intelligence Agency;
- (D) the Federal Bureau of Investigation;

or

(E) the General Accounting Office;

(2) the term "employee" means an employee (as defined in section 2105 of title 5, United States Code) whose rate of basic pay would, but for this title, be determined under—

(A) subchapter III or section 5371 of chapter 53 of title 5, United States Code, relating to the General Schedule; or

(B) chapter 54 of title 5, United States Code, relating to the performance management and recognition system; and

(3) the terms "collective bargaining", "collective bargaining agreement", "exclusive representative", "management official", and "supervisor" each has the meaning given such term under section 7103(a) of title 5, United States Code.

SEC. 102. DEMONSTRATION PROGRAMS OF ALTERNATIVE COMPENSATION SYSTEMS.

(a) DEMONSTRATION PROGRAMS.—Within 2 years after the date of the enactment of this Act, the demonstration programs using alternative compensation systems as provided under this Act, shall be implemented by the Office of Personnel Management and—

(1) the head of the relevant agency for any program described under subsection (b)(1)(A);

(2) the Secretary of Defense for the programs described under subsection (b)(1)(B); and

(3) the Administrator of the National Aeronautics and Space Administration for the program described under subsection (b)(1)(C).

(b) PROGRAMS, PARTICIPANTS, AND LIMITATIONS.—(1) There shall be implemented under the provisions of this section, no less than 6 and no more than 10 demonstration programs using alternative compensation systems, of which—

(A) between 1 and 6 such programs shall be designed and implemented by the head of an agency, after consultation and approval by the Office of Personnel Management;

(B) 4 such programs shall be developed and implemented within the Department of Defense by the Secretary of Defense, after consultation and approval by the Office of Personnel Management; and

(C) 1 such program shall be developed and implemented within the National Aeronautics and Space Administration by the Administrator of such Administration, after consultation and approval by the Office of Personnel Management.

(2) Each such program under this section shall—

(A) cover a sufficient number of positions within an agency to provide an adequate basis on which to evaluate the desirability of implementing such program on a broader scale within the Government, except that not less than the equivalent of 5,000 full-time positions and no more than the equivalent of 25,000 full-time positions shall be covered in any such program at any time;

(B) include in the development of such program, prior to implementation, a detailed information gathering plan—

(i) to provide for the evaluation of such program to be developed by the Office of Personnel Management and the head of the relevant agency;

(ii) which shall include the total number of employees to participate in such program;

(iii) which shall be—

(I) submitted to the General Accounting Office, at least 60 days prior to program implementation; and

(II) reviewed by the General Accounting Office which shall report the results of the review to the Senate Committee on Governmental Affairs, the House Committee on Post Office and Civil Service, and the head of the relevant agency; and

(iv) which shall be periodically reviewed with regard to the adherence of such agency to such plan by the General Accounting Office which shall submit reports of such reviews to the relevant congressional committees; and

(C) within 2 years after the date of implementation under subsection (a), have the full number of employees participating in such program as provided for in subparagraph (B)(ii).

(3)(A) Notwithstanding the provisions of paragraph (2), no more than 2 programs described under paragraph (1)(B) may cover no more than the equivalent of 35,000 full-time positions each.

(B) Notwithstanding the provisions of subparagraph (A), the total number of equivalent full-time positions combined for the 4 programs described under paragraph (1)(B) may cover no more than 100,000 such positions.

(c) MINIMUM AND MAXIMUM RATES OF BASIC PAY; PROGRAM COST LIMITATIONS.—Each program under this section shall provide that—

(1) the rate of basic pay for an employee participating in any program under this title—

(A) shall be at least equal to the rate of basic pay payable to such employee for the pay period immediately preceding the date of the implementation of such program; and

(B) may not exceed the rate of basic pay payable for level V of the Executive Schedule; and

(2) the total cost to the Government in carrying out such programs shall not exceed what the total cost to the Government would have been, during the same period, if this Act had not been enacted.

(d) EMPLOYEES IF COLLECTIVE BARGAINING UNITS.—(1) Employees within a unit with respect to which a labor organization is accorded exclusive recognition under chapter 71 of title 5, United States Code, shall not be included within any program under this section if the program—

(A) would violate a collective bargaining agreement between the agency and the labor organization, unless there is another written agreement with respect to the program between the agency and the organization permitting the inclusion; or

(B) is not covered by such a collective bargaining agreement, until there has been consultation or negotiation, as appropriate, by the agency with the labor organization.

(2) Employees within any unit with respect to which a labor organization has not been accorded exclusive recognition under chapter 71 of title 5, United States Code, shall not be included within any program under this section, unless there has been agency consultation regarding the program with the employees in the unit.

(e) NOTIFICATION OF PROGRAMS AND REPORTS.—The Office of Personnel Management, the Secretary of Defense, and the Administrator of the National Aeronautics and Space Administration shall, with respect to each applicable program implemented under subsection (a)—

(1) publish the plan developed under subsection (b)(2)(B) for such program in the Federal Register prior to implementation of such program;

(2) provide notification of the implementation of such program to affected employees and the Congress within 90 days before the date of such implementation; and

(3) provide an annual report to the Congress on such program.

(f) TERMINATION OF PROGRAMS.—(1) Subject to paragraph (2), any demonstration program implementing an alternative compensation system under this section shall terminate at the earlier date of—

(A) 5 years after the date on which the full number of employees are participating in such program as provided for under subsection (b)(2)(C); or

(B) 7 years after the date of the implementation of such program under subsection (a).

(2)(A) A program under this section may be terminated in accordance with the provisions of subparagraph (B). If the Office of Personnel Management, in consultation with the head of the relevant agency, determines that such program creates a substantial hardship on, or is not in the best interests of, the public, the Federal Government, or employees.

(B) If a determination is made under the provisions of subparagraph (A), a program may be terminated by the Office of Personnel Management, after consultation with—

(i) the head of the relevant agency, with regard to a program described under subsection (b)(1)(A);

(ii) the Secretary of Defense, with regard to a program described under subsection (b)(1)(B); or

(iii) the Administrator of the National Aeronautics and Space Administration, with regard to the program described under subsection (b)(1)(C).

(3) If a program is terminated under the provisions of paragraph (2), the head of the relevant agency shall notify all affected employees of such termination no later than 90 days before the date of such termination.

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SEC. 533. ALTERNATIVE COMPENSATION SYSTEMS.

(a) **TYPES OF SYSTEMS.**—Before developing and implementing a demonstration program under section 102, the Secretary of Defense, the Administrator of the National Aeronautics and Space Administration, and each head of a relevant agency shall consider an alternative compensation system—

(1) under which annual pay adjustments under section 5305 of title 5, United States Code, provide that the total pay and benefits for Government service shall be comparable to the total pay and benefits for individuals at the same levels of work outside the Government;

(2) under which annual pay adjustments under section 5305 of title 5, United States Code, provide that rates of basic pay payable to employees are consistent with rates of basic pay generally payable for the same levels of work outside the Government within the same geographic region;

(3) under which conditions of employment for employees shall be subject to collective bargaining; or

(4) established by the head of the agency involved, which—

(A) may identify separate career categories for employees in positions which are subject to the system;

(B) shall provide for the rate of basic pay of an employee to be set and adjusted within salary structures based on such factors as the experience and achievements of the employee, position in a pay range, job responsibilities, rates of pay for similar positions outside the Government, and (consistent with section 5334 of title 5, United States Code) changes in positions or types of appointments;

(C) shall provide pay differentials for service as a supervisor or management official (which shall be considered a part of basic pay for purposes of subchapter III of chapter 83, and chapter 84, of title 5, United States Code);

(D) may authorize special awards (which shall not be considered a part of basic pay for any purpose); and

(E) shall authorize performance recognition in the form of—

(i) a lump-sum payment (which shall not be considered a part of basic pay for any purpose);

(ii) an increase in the rate of basic pay of an employee within a pay range or to a higher pay range; or

(iii) nonmonetary recognition.

(b)(1) **COLLECTIVE BARGAINING ALTERNATIVE SYSTEM.**—If the Secretary of Defense, the Administrator of the National Aeronautics and Space Administration, or any head of an agency implements a program using a system described in subsection (a)(3), such program shall provide that—

(A) any pay schedules or rates shall be established to provide that an appropriate differential (which shall be considered part of basic pay) is provided for service as a supervisor or management official; and

(B) only a unit or subdivision of a unit for which an exclusive representative is certified may participate.

(2) **DEFINITION.**—For purposes of a program using a system described in subsection (a)(3), the term "conditions of employment" means—

(A) personnel policies, practices, and matters, whether established by rule, regulation, or otherwise, included under section 7103(a)(14) of title 5, United States Code; and

(B) personnel policies, practices, and matters, whether established by rule, regulation, or otherwise, relating to classification of positions, leave, pay, or other compensation or benefits;

except that such term does not include policies, practices, and matters relating to life insurance, health insurance, and retirement.

SEC. 534. RULE OF STATUTORY CONSTRUCTION.

(a) Except as provided in subsection (b), in the administration of an alternative compensation system under this title, the provisions of this title shall apply notwithstanding any inconsistent provision of title 5, United States Code.

(b) In the administration of an alternative compensation system under this title, no provision of this title may be construed to waive any inconsistent provision of—

(1) chapters 83 and 84 of title 5, United States Code, relating to retirement;

(2) chapter 87 of title 5, United States Code, relating to life insurance; or

(3) chapter 89 of title 5, United States Code, relating to health insurance.

TITLE II—HIGHER MINIMUM RATES OF PAY, MISCELLANEOUS ALLOWANCES, AND OTHER MATTERS**SEC. 5301. HIGHER MINIMUM RATES OF PAY.**

(a) Section 5303 of title 5, United States Code, is amended to read as follows:

"§ 5303. Higher minimum rates of pay

"(a) When the Office of Personnel Management finds that the Government is experiencing significant difficulty in recruiting or retaining well-qualified employees under a statutory pay system for one or more occupations in one or more areas or locations—

"(1) because the pay rates for the positions involved are generally less than the rates payable for similar positions held—

"(A) by individuals outside the Government; or

"(B) by other individuals within the executive branch of the Government;

"(2) because of the remoteness of the area or location involved;

"(3) because of the undesirability of the working conditions or the nature of the work involved, including exposure to toxic substances or other occupational hazards; or

"(4) because of any other circumstance which the Office may identify;

the Office may establish for the areas or locations higher minimum rates of basic pay for one or more grades or levels, occupational groups, series, classes, or subdivisions thereof, and may make corresponding increases in all rates of the pay range for each such grade or level. However, a minimum rate so established may not exceed the maximum pay rate for the grade or level by more than the amount by which such maximum rate exceeds such minimum rate.

"(b) In addition to positions under the statutory pay systems, the authority conferred on the Office by section (a) may be exercised with respect to positions paid under any other system established by or under Federal statute for positions within the executive branch of the Government.

"(c) A rate of pay established through the exercise of any authority under this section—

"(1) shall be subject to revision or adjustment; and

"(2) shall be subject to reduction or termination (in which case, pay retention shall be provided under section 5363).

"(d) Any authority under this section may be exercised only to the extent that funds are available for payment of rates of basic pay authorized under this section.

"(e) If the rates of pay under the General Schedule are increased pursuant to section 5305 of this title in any fiscal year, then, not later than the effective date of the increase in such rates, each rate of pay in effect for a position under this section on September 30 of the preceding fiscal year shall be in-

creased by any percentage that is not less than the increase in the rates of pay for the corresponding grade of the General Schedule. Nothing in this paragraph prohibits more than one increase in such rate of pay during any fiscal year.

"(f) An increase in a rate of basic pay under this section—

"(1) is not an equivalent increase in pay within the meaning of section 5335(a); and

"(2) has the force and effect of statute.

"(g) Under regulations prescribed by the Office of Personnel Management, the benefit of advancement through the range of basic pay for a grade or level shall be preserved for any individual who is covered by this section and whose continuous service is interrupted in the public interest by service in the Armed Forces or by service in essential non-Government civilian employment during a period of war or national emergency."

(b) **CONFORMING AMENDMENT.**—The table of sections for chapter 53 of title 5, United States Code, is amended by striking out the item relating to section 5303 and inserting in lieu thereof the following:

"5303. Higher minimum rates of pay."

SEC. 5302. BONUS PAYMENTS.

(a) **BONUS PAYMENTS.**—Chapter 53 of title 5, United States Code, is amended by inserting after section 5303 the following new section:

"§ 5303a. Bonus Payments

"(a)(1) Under regulations prescribed by the Director of the Office of Personnel Management, the head of an agency may provide for recruitment and retention bonus payments under this section—

"(A) to employees serving in positions for which the minimum rate of basic pay has been established under section 5303 of this title;

"(B) to employees whose responsibilities include the regular supervision of any employee paid at a rate established under section 5303 of this title; or

"(C) subject to the approval of the head of an agency, under criteria prescribed by the Office of Personnel Management, to any other employees of such agency.

"(2) A bonus payment under this section shall be equal to an amount, not less than \$1,000 and not more than \$10,000, determined by the head of the agency making such payment.

"(3) Bonus payments by an agency during any fiscal year may not exceed one percent of the agency's payroll for that fiscal year, unless the Office of Personnel Management authorizes a higher limit for the agency due to unusually difficult recruitment or retention problems.

"(b)(1) A payment may not be made to an individual under this section unless such individual has entered into an agreement with the head of the agency employing such individual which provides that—

"(A) such individual will continue in the service of the agency for a period of time determined under paragraph (2) of this subsection; and

"(B) if separated (except by reason of a reduction in force) from the agency before the end of the period agreed to, such individual will repay to the Government any amounts paid to such individual under this section.

"(2) The period of service applicable under paragraph (1) of this subsection may not—

"(A) be less than 6 months; and

"(B) exceed 2 years.

"(3) If an individual fails to repay any amount required under paragraph (1)(B) of this subsection, such amount is recoverable

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by the Government from the individual or the estate of such individual by—

"(A) setoff against accrued pay, compensation, amount of retirement credit, or other amount due the individual from the Government; and

"(B) any other method provided by law for the recovery of amounts owed to the Government.

Notwithstanding the preceding sentence, the head of the agency concerned may, under the regulations issued under subsection (a) of this section, waive in whole or in part a right of recovery under this subsection if it is shown that the recovery would be against equity and good conscience or against the public interest.

"(c) The full amount of a bonus under this section shall be paid, whether in a lump sum or in the form of periodic payments, before the end of the period of service agreed to under subsection (b) of this section.

"(d) A payment under this section is not part of the basic pay of an individual.

"(e) The Office of Personnel Management shall submit a report to Congress each year on the operation of this section, including the number and amounts of bonus payments and the occupations and agencies involved."

(b) **CONFORMING AMENDMENT.**—The table of sections for chapter 53 of title 5, United States Code, is amended by inserting after the item relating to section 5303 the following:

"5303a. Bonus payments."

(c) **SENSE OF CONGRESS.**—The amendments made by this section are enacted by the Congress with the expectation that bonus payments under such amendments will prove to be a more cost-effective method to deal with recruitment and retention difficulties than the payment of higher minimum rates of pay under section 5303 of title 5, United States Code.

(d) **REPEAL.**—The amendments made by this section are repealed 7 years after the date of enactment of this Act.

SEC. 201. ADVANCE PAYMENT OF BASIC PAY.

(a) **GENERAL RULE.**—Chapter 55 of title 5, United States Code, is amended by inserting after section 5522 the following:

"5522a. Advance payment of basic pay

"(a) The head of an agency may provide for the advance payment of basic pay, covering a period of not more than 30 days, to or for the account of any employee of the agency who is appointed to a position if the rate of pay for such position is established under section 5303.

"(b) Subsection (c) of section 5522, relating to the recovery of funds advanced under subsection (a) of such section, applies with respect to any amounts advanced under subsection (a) of this section.

"(c) Notwithstanding section 5521(1), for the purpose of this section, the term 'agency' means any agency to which section 5303 applies."

(b) **CONFORMING AMENDMENT.**—The table of sections for chapter 55 of title 5, United States Code, is amended by inserting after the item relating to section 5522 the following:

"5522a. Advance payment of basic pay."

SEC. 204. ELIMINATION OF GS-11 THRESHOLD FOR NEW APPOINTEES TO BE PAID ABOVE MINIMUM RATES.

Section 5333(a) of title 5, United States Code, is amended by striking "in GS-11 or above".

SEC. 205. MISCELLANEOUS ALLOWANCES.

(a) **REMOTE WORKSITE ALLOWANCE.**—Section 5942 of title 5, United States Code, is amended by striking "of not to exceed \$10 a

day," and inserting in lieu thereof "under this section."

(b) **UNIFORM ALLOWANCE.**—(1) Section 5901(a) of title 5, United States Code, is amended to read as follows:

"(A)(1) There is authorized to be appropriated annually to each agency of the Government of the United States, including a Government-owned corporation, such amounts as may be necessary—

"(A) to furnish a uniform to each employee of such agency who is required by regulation or statute to wear a prescribed uniform in the performance of official duties, or

"(B) to pay to each such employee an allowance adequate to cover the full cost of such uniform.

"(2) A uniform allowance under this section may be paid only at the times authorized by the regulations prescribed under section 5902 of this title."

(2)(A) Chapter 59 of title 5, United States Code, is amended—

(i) by striking out section 5902; and

(ii) by redesignating section 5903 as section 5902.

(B) The table of sections for chapter 59 of title 5, United States Code, is amended by striking the items relating to sections 5902 and 5903, respectively, and inserting in lieu thereof the following:

"5902. Regulations".

SEC. 206. INCENTIVE SPECIAL PAY FOR UNITED STATES PUBLIC HEALTH SERVICE NURSES.

Section 208(a) of the Public Health Service Act (42 U.S.C. 210(a)) is amended by inserting at the end thereof the following new paragraph:

"(3) Commissioned nurse officers in the Regular and Reserve Corps shall while on active duty be paid incentive special pay in the same amounts as, and under the same terms and conditions which apply to, the incentive special pay now or hereafter paid to commissioned nurse officers of the Armed Forces under chapter 5 of title 37, United States Code."

SEC. 207. EFFECTIVE DATE.

The provisions of this title and the amendments made by this title shall take effect 90 days after the date of the enactment of this Act.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the bill, as amended, was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CIVIL LIBERTIES ACT— CONFERENCE REPORT

Mr. BYRD. Mr. President, I submit a report of the committee of conference on H.R. 442 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The assistant clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 442) to implement the recommendations of the Commission on Wartime Relocation and Internment of Civilians, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed

to the consideration of the conference report.

(The conference report will be printed in the House proceedings of the Record.)

Mr. GLENN. Mr. President, the conference report on H.R. 442, a bill to implement the recommendations of the Commission on Wartime Relocation and Internment of Civilians, reflects a reasonable and well-thought out compromise between the Senate and House versions of the bill. H.R. 442 was passed by the House in September, 1987, and S. 1009, the Senate version of the bill, which was reported from our Governmental Affairs Committee, was passed last April. There were several substantive differences between the two bills which have been resolved. On behalf of the Governmental Affairs Committee, I am glad to report to the Senate on that resolution.

First, the compromise bill includes restitution to the Aleuts who were relocated during World War II from their homes on the Aleutian and Pribilof Islands. This provision was included in the Senate version of the bill, but is contained in separate legislation that has not yet been passed by the House.

Second, the bill creates a Civil Liberties Education Fund authorized to be funded for \$1.25 billion. From this fund, each individual of Japanese ancestry living on the date of enactment is eligible to receive payment of \$20,000. The Senate version would have allowed such compensation to each internee who is living on the date of payment.

In addition, as a compromise, the conferees agreed that the payments of the vested rights of those eligible individuals who die after the date of enactment, but before they receive payment, are limited to three categories: First, a surviving spouse of 1 year, and if no surviving spouse, then second, equal shares to all children living at the time of payment, and if no surviving children, then three equal shares to parents living on date of payment. Under the compromise, if none of these three categories of heirs survive the eligible individual, then the compensation remains in the fund for allowable educational purposes.

Frankly, this was the most difficult issue for the conference committee to resolve. However, I feel that we have reached a compromise that manages to retain the essential thrust of both approaches. The sentiment underlying the Senate bill is that it is appropriate that compensation be made to those who actually suffered in the internment camps. The House approach recognizes the administrative problems for the Department of Justice, the agency responsible for locating and identifying eligible individuals, and the fundamental fairness of vesting the eligibility rights of those Japanese